

ORIGINAL ARTICLES

MEDICAL EXPERT TESTIMONY.

Something like a year ago, on motion by the writer, the council of the Los Angeles Medical Association appointed a committee to confer with the Committee on Revision of Laws of the Los Angeles Bar Association concerning legislation which should effect certain reforms in the appointment and general status of the medical expert in this commonwealth.

On March 18, 1910, a symposium on this subject was given at a meeting of the County Medical Association. Distinguished members of the bench and bar were invited to participate and the papers of the contributors to the symposium, representing views of the two professions, are published in this number of the Journal.

The committee is especially gratified at the sincere and cordial spirit of co-operation which members of the bar throughout the state have manifested in this subject. Our own profession, too, has shown equal earnestness in its determination to effect a reform in the status of the medical expert. At the Sacramento meeting of the State Medical Society, resolutions were unanimously adopted recognizing the great need of reform and endorsing any practicable statutory measures which shall improve present conditions.

The committee at Los Angeles feels it has a most efficient and potent executive helper in the person of Mr. Oscar C. Mueller, chairman of the committee on revision of laws of the local Bar Association. His hearty sympathy and co-operation have meant everything to us, and the committee feels our eventual success at Sacramento will be very largely due to the exceptional executive ability Mr. Mueller is showing in the development of this reform.

The committee assures the profession of the state of its high appreciation of the loyalty shown it everywhere, and invites the active personal endorsement of the bill which shall later be presented to the Legislature on medical expert testimony. This bill will be framed by officially delegated committees of the Los Angeles and San Francisco Bar and Medical Associations in joint conference, and it will go to Sacramento backed by the united influence of these organizations.

(Signed by the Committee.)

THOMAS J. ORBISON,
F. C. E. MATTISON,
ANDREW STEWART LOBINGIER,
Chairman.

REMARKS OF OSCAR C. MUELLER, CHAIRMAN OF COMMITTEE ON AMENDMENT OF LAWS OF THE LOS ANGELES BAR ASSOCIATION, ON "MEDICAL EXPERT TESTIMONY."

The present status of expert testimony is unquestionably a disgrace to both the legal and medical professions, and the earnest endeavors of Dr. Lobingier to free these professions from this stigma

and have California pioneer remedial legislation, is indeed laudable. The testimony of the alienists in the Thaw case, for example, amounted to a bargain and sale of evidence. On account of the great wealth of the defendant's family, it was generally conceded that he employed the expert witnesses to argue the subject of the various forms of dementia, while on behalf of the state of New York, the expert was introduced for the purpose of showing that Thaw's actions were not caused by a diseased brain. Now the tables are turned, and to get Thaw out of the asylum his physicians testify that he is of sound mind.

NECESSITY OF REFORM.

"Believe no expert," says the cynic Bar,
Yet how unjust—all alike deride.

This swears white black; but straightway—haud impar,

An equal sage approves the candid side."

As long ago as 1874, Professor John Ordronaux declared: "There is a growing tendency to look with distrust upon every form of skilled testimony. Fatal exhibitions of scientific inaccuracy and self-contradiction cannot but weaken public confidence in the value of all such evidence. . . . Some remedy is called for, both in the interest of humanity and justice."

A judge of the Supreme Court of the United States declared in a leading case that "experience has shown that opposite opinions of persons professing to be experts may be obtained to any extent; and it often occurs that not only days but even weeks are consumed in examinations to test the skill or knowledge of such witnesses and the correctness of their opinions, wasting time and wearing the patience of both the court and jury, and perplexing instead of elucidating the questions involved in the issue."

In a celebrated case in New York City, the expert testimony required six days for its introduction. Eminent surgeons were called and learned counsel examined them. When the judge charged the jury, he told them to disregard all of the expert testimony as the same was too contradictory!

In the famous Leutgert murder case in Chicago, the bones of the victim were discovered in a vat. Some of the most widely known osteologists of the age strenuously insisted that the bones in question did not belong to a human being, but belonged to a hog!

In another well-known case three doctors testified regarding the mental capacity of a man. Two of the doctors of vast experience differed radically. The third was a young practitioner, and he was believed while the other testimony was wholly disregarded, because of his pronounced impartiality. This would emphasize the necessity of a commission, which I will mention later on.

Another instance of contradiction was that of the trial of the Le Page murder case. Blood-stained garments had been subjected to chemical and microscopical analysis. Three doctors called by the state all testified that blood corpuscles could be restored to perfect shape after the lapse of many years, and that dried human blood can be distinguished from that of domestic animals. On the other hand, two leading physicians of Montreal testified positively